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ATTORNEYS FOR DEFENDANTS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SUSAN BEERMAN,

Plaintiff,

v.

GENENTECH, INC., GENENTECH,
INC., GROUP LONG TERM DISABILITY
BENEFIT PLAN, and DOES 1 through 50,
Inclusive,

Defendants.

Case No. C -06-0827 MMC

**STIPULATION AND [PROPOSED]
ORDER EXTENDING THE DEADLINE
TO COMPLETE MEDIATION AND
FOR PLAINTIFF TO FILE A MOTION
FOR RULING ON THE STANDARD OF
REVIEW**

1 The parties, by and through their counsel of record, do hereby stipulate to and request a
2 order: (1) continuing the deadline to complete mediation from August 10, 2006, to December 1,
3 2006, and (2) continuing the deadline for plaintiff to file a motion for ruling on the standard of
4 review from September 29, 2006 to October 15, 2006. This stipulation and request is entered
5 into based on the following facts:

6 1. This is disability claim governed by the Employee Retirement Income Security Act
7 ("ERISA").

8 2. Plaintiff intends to seek a ruling the standard of review which the Court will
9 employ in reviewing the Defendants' decision to terminate Plaintiff's disability benefits. Plaintiff
10 believes that the standard of review must be de novo, while Defendants believe it must be abuse
11 of discretion. Which standard of review will be applied could materially effect the negotiating
12 positions of the parties and, therefore, should be determined before mediation.

13 3. Plaintiff believes that she is entitled to conduct discovery in order to gain evidence
14 concerning an alleged conflict of interest on the part of the claims administrator, which Plaintiff
15 believes affected the claims administrator's decision to terminate Plaintiff's benefits. Plaintiff
16 contends that such a conflict of interest may trigger a de novo review of her disability claim.
17 Defendant disputes the right of Plaintiff to conduct discovery, and disputes the conclusion that a
18 conflict of interest is sufficient to trigger de novo review.

19 4. This dispute over the right to conduct discovery must be resolved before a ruling
20 on the standard of review is sought by the parties. Plaintiff was to have served discovery on
21 Defendants by the end of May, 2006. Plaintiff's counsel was delayed in doing so by reason of
22 an appellate briefing due to the California Court of Appeal, First Appellate District, in Monroe
23 v. Health Net of California, Inc., Case No. A111815. Plaintiff will serve discovery on
24 Defendants by June 30, 2006.

25 5. It is anticipated that Plaintiff will file a motion to compel responses to discovery,
26 which will then place before the court the issue of whether and to what extent discovery is allowed
27 in this case. Because of the delay in propounding discovery, a motion to compel will not be filed
28 until approximately August 15, 2006, with a hearing likely some time in mid-September 2006.

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1 6. Once the right to conduct discovery is resolved and discovery completed, Plaintiff
2 will move for an order on the standard of review. Plaintiff anticipates filing a motion by mid-
3 October 2006, with a hearing likely some time in mid-November 2006.

4 7. Accordingly, the parties believe that mediation can be completed by December 1,
5 2006.

6 8. A conference call was held with the Court appointed mediator, Jeffrey Lewis, on
7 June 13, 2006, during which these timing issues were discussed. The mediator agreed that a
8 continuance of the deadline to complete mediation was appropriate and necessary, and authorized
9 the parties to so inform the Court in support of this stipulation and request for continuance.

10 **IT IS SO STIPULATED**

11 Dated: ~~June~~ 11, 2006
12 *July*

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13 By: 

14 **MICHAEL S. HENDERSON**
Attorneys for Plaintiff

15 Dated: ~~June~~ 11, 2006
16 *July*

**SEDGWICK, DETERT, MORAN & ARNOLD
LLP**

17 By: 
18 **REBECCA A. HULL**
19 Attorneys for Defendants
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~~[PROPOSED]~~ ORDER

Upon stipulation of the parties, and good cause appearing therefore,

IT IS HEREBY ORDERED:

1. The mediation deadline of August 10, 2006, is continued to December 1, 2006.
- 2) The deadline for Plaintiff to file a motion for ruling on the standard of review is continued from September 29, 2006, to October 15, 2006.

Date: July 24, 2006


HON. MAXINE M. CHESNEY